In the High Court of Judicature at Madras

Dated: 18/09/2003

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The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.3869 of 2000

Dr.Mohamed Ibrahim ..... Petitioner

-Vs-

1. The Secretary to Government
of Tamilnadu
Municipal Administration and
Water Supply Department
Fort St.George
Chennai.9.
2. The Director of Municipal
Administration
Chepauk
Madras.5.
3. The Commissioner
Salem Corporation
Salem.1. ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.S.B.Fazluddin

For respondents: Mr.R.Vijayakumar GP for R1 & R2
Mr.G.Sankaran
Spl.G.P.(MAWS)

:O R D E R

The petitioner filed the above writ petition praying to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order being Memo No.F3/7007/98 dated 11.06.1999 of the Commissioner of Salem Corporation and quash the same and further direct the respondents herein to regularise the service of the petitiner with effect from his initial appointment as on 02.07.1975 with all attendant benefits such as salaries, increments, surrender leave encashment and interest for non-payment of salaries.

2. The petitioner was appointed temporarily as Unani Doctor in the service of the third respondent on 02.07.1975 and was continuing in

service till 20.06.1989 on which date he was ousted from service. The petitioner challenged the said order of ousting in W.P.No.8416 of 1 989 and this Court quashed the said order on 20.09.1994 and thereby directing the respondents 1 to 3 to reinstate the petitioner with all benefits. Subsequent to the order of this Court, the petitioner was again appointed by the third respondent on 01.06.1995 as Medical Officer Unani. But even after re-appointment, the petitioner was not given any back wages or any other benefits. Therefore, the petitioner made representations and those representations were rejected. The petitioner also filed contempt application No.665 of 1999 and this Court by an order dated 24.09.1999 closed the contempt application refusing to issue notice to the respondent and thereafter the petitioner has filed the present writ petition.

3. The respondents have not filed any counter affidavit.

4. Heard both sides.

5. Mr.Fazulluddin, learned counsel appearing for the petitioner submitted that this Court has passed an order in W.P.No.8416 of 1989 directing the respondent to reinstate the petitioner with all attendant benefits. The Order reads as follows:

"Upon the facts and circumstances of the case, I feel that the impugned order passed by the second respondent is arbitrary. Even though the petitioner was appointed temporarily in the post he was allowed to continue in service for fourteen years. As observed by the Supreme Court in the above ruling

"... of those rights, the question of security of work is of utmost importance ... That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management." As such the right of the petitioner should be protected. In effect the petitioner has acquired the status of permanency by virtue of continuous service for 14 years, and his services should be treated as a permanent services and the respondents should regularise his service with all the benefits. In view of the above, the impugned order is quashed and the respondents 1 to 3 are directed to reinstate the petitioner with all the benefits. Upon the facts and circumstances of the case, there shall be no order as to costs."

Therefore "with all benefits" includes the back wages, leave salary, increment, periodical promotions etc. But the respondents had not given any of the benefits but treated him as a fresh appointee from 01.0 6.1995. Therefore, it is not in compliance with the order of the writ petition No.8614 of 1989 and hence, the impugned order is liable to be quashed.

6. Mr.G.Sankaran, learned Special Government Pleader appearing for the third respondent submitted that the the third respondent has complied with the judgment of this Court passed in W.P.No.8614 of 1989. Pursuant to the order of this Court in W.P.No.8614 of 1989 an order was passed by the third respondent reinstating the petitioner with effect from 01.06.1995. When the reinstatement was challenged by way of contempt application as it is not in accordance with the judgment of this Court, this Court has held that it has not mentioned the date from which the petitioner should be regularised and hence the respondents were of the view that he should have been regularised only from the date of judgment. The order in the Contempt Application 665 of 19 99 is as follows:

" Since this Court has not mentioned the date from which the

petitioner should be regularised, the respondents were of the view that he should have been regularised only from the date of the judgment. If the petitioner is aggrieved, it is open to him to challenge the order. I hold that by passing an order of regularisation from the date of judgment, the respondents have not violated or contravened any order of this Court and hence it is not necessary to issue any notice to them. Hence, the contempt application is closed."

7. Therefore, the order in the above said writ petition only means that the petitioner should be made permanent or the petitioner's service should be regularised only from the date of judgment and on any date earlier to that. So viewed the petitioner is not entitled to any other benefits what was already given to him by the third respondent. Therefore, the impugned order is not liable to be set aside as it is perfectly valid.

8. Learned counsel further submitted that the petitioner was not having the required qualification when he was originally appointed on 02.07.1975, and hence, he cannot get the permanency. Therefore, even assuming that he was appointed he does not get himself qualified to the other post and he can never be appointed to that post.

9. The order of the Court is very clear as such, the right of the petitioner should be protected. In fact the petitioner has acquired the status of permanency and his service should be treated as permanent service and the respondent should regularise his service with all benefits. These words definitely convey the meaning that the petitioner's service should be treated as permanent one, from the date of original appointment. It cannot be considered as permanent from the date of the judgment in W.P.No.8614 of 1989.

10. Further, the respondents should regularise the service of the petitioner with all the benefits means, increment, promotions, and any other benefits that was conferred on a person who is occupying the post of Medical Officer Unani in the service of the third respondent. The order of this Court does not give rise to any doubt or ambiguity. Therefore, the argument of the learned counsel for the petitioner is not acceptable.

11. Merely because this Court has refused to issue notice on contempt application, it cannot be said that this Court has already interpreted the judgment in the manner as viewed by the respondents' counsel. Therefore, when the judgment is very clear and unambiguous, the third respondent without any any reason refused to confer all the benefits.

12. Even assuming for the sake of argument that this petitioner is not entitled to hold that post and, cannot get hold of the permanency in service, the only remedy that was available to the respondents was to file an appeal and set aside the order of this court. When that was not done by the respondents, the order was allowed to stand and the respondents are bound to obey the order, even if it is not legally sustainable.

13. With respect to the back wages unless there is evidence to show that the petitioner was in service in any other department or in any other concern, he is entitled for back wages. Since there is no evidence adduced by the respondents to the effect that the petitioner was working in some other concern, this Court cannot come to the conclusion that he was working in some other concern, therefore, he is entitled for the back wages even during the period when he was kept out of service. Hence, the impugned order is set aside and the petitioner is entitled to all the benefits.

In the result, the writ petition is allowed. No Costs.

Index :Yes
Internet:Yes

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